

PLANNING DEPARTMENT - BOARD OF ADJUSTMENT

ACTION SHEET

TO: John P. Bohenko, City Manager

FROM: Mary Koepenick, Planning Department

RE: Actions Taken by the Portsmouth **Board of Adjustment at its regular meeting** on November 20, 2012 in the Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Vice-Chairman Arthur Parrott, Susan Chamberlin, Charles LeMay, Christopher Mulligan, David Rheaume, Alternate: Patrick Moretti

EXCUSED: Chairman David Witham, Derek Durbin, Alternate: Robin Rousseau

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In the absence of Chairman Witham, Vice-Chairman Parrott served as Chair for the meeting.

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I. APPROVAL OF MINUTES

A) June 19, 2012

By unanimous voice vote, the Minutes were approved with one minor correction.

B) Excerpt of Minutes, September 18, 2012, 37 Wholey Way.

By unanimous voice vote, the Excerpt of Minutes was approved as presented.

C) Excerpt of Minutes, September 25, 2012, 3605 Lafayette Road.

By unanimous voice vote, the Excerpt of Minutes was approved as presented.

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II. OLD BUSINESS

A) Request for Rehearing for property located at 37 Wholey Way.

Action:

The Board voted to **deny** the request. Nothing new was presented in the Request for Rehearing and, in making a decision, the Board gave due and proper consideration to the appeal.

B) Request for Rehearing for property located at 3605 Lafayette Road.

Action:

The Board voted to **deny** the request. Although individual Board members may have made statements of personal opinion on this application, this fact in no way binds or necessarily reflects the opinions and ultimate decision of the Board. Thus, there was nothing new that had been presented and the decision was rendered after due consideration by the Board.

C) Case #10-6 (Petition, postponed from the October 8, 2012 meeting, amended as indicated in italics)

Petitioner: Cumberland Farms Inc.

Property: 1475 Lafayette Road

Assessor Plan 251, Lot 124

Zoning District: Gateway

Description: Rebuild existing gas station with convenience store, gasoline dispensers, canopy and free-standing signs.

Requests: 1. (*Amended*) A Variance from Section 10.592.10, Use #11.20 to allow *a lot containing* a motor vehicle service station to be located 0'± from a Residential or Mixed Residential District where 200' is the minimum distance required.

2. A Variance from Section 10.843.33 to allow pump islands to be set back 37'± from all lot lines where a minimum of 40' is required.

3. A Variance from Section 10.1113.20 to allow required off-street parking spaces to be located between a principal building and a street.

4. A Variance from Section 10.1243 to permit two freestanding signs on a lot where only one freestanding sign per lot is permitted.

5. (*Added*) A *Special Exception under Section 10.440, Use #11.20 to allow a motor vehicle service station in a district where the use is only allowed by Special Exception.*

Action:

The Board voted to **grant** the variances and special exception as presented and advertised with the following stipulations:

Stipulations:

1. That the tree line buffer area be maintained and retained as it currently exists.
2. That this approval is conditional on the Planning Board's approval of the proposed lot line adjustment between Lot #124 and Lot #125.

Other:

The following representations were made by the applicant:

1. Noise mitigation features for the HVAC units would be built into the proposed building so that the residential neighborhood to the rear will be protected.
2. The underground storage tanks will be modernized and upgraded to meet the best design standards and also be equipped with an updated alarm system to reduce any possible hazard from fire, explosion or release of toxic materials.

Review Criteria:

The variances were granted for the following reasons:

- It will be in the public interest to maintain a business that is already in existence and the represented noise abatement features in the proposed building will protect the residential district to the rear.
- In the spirit of the Ordinance, businesses are encouraged in the Gateway District as long as they are balanced with the needs of residential neighbors which this proposal appears to do.
- Substantial justice will be done in that an existing use will continue but in an improved fashion.
- Property values will not be diminished as the 0'± setback from the residential area results from the proposed lot line adjustment and not an actual physical change to a property. The existing gas station has been in operation for a number of years and, with the stipulated buffer, the commercial activity will be kept outside the existing tree-lined buffer adjacent to the residential neighborhood.
- Literal enforcement of the provisions of the Ordinance would make the property less functional creating an unnecessary hardship while granting the variances will allow for improved traffic flow and better functionality. No fair and substantial relationship exists between the general purposes of the Ordinance and their specific application to this property as the purposes of safety, aesthetics and property values have all been addressed in keeping with the commercial mix in the neighborhood.

The special exception was granted for the following reasons:

- The standards as provided by the Ordinance for this particular use are permitted by special exception.
- There will be no hazard to the public or adjacent properties on account of fire explosion or release of toxic materials as the number of fuel pumps will not be increased and additional safety precautions should bring the property into greater compliance with current environmental and fire hazard regulations.
- With the stipulations, and as presented, there will be no detriment to property values in the area.
- There will be no creation of a traffic safety hazard as the reconstruction was designed to improve the traffic flow, which currently had the potential for accidents. The traffic flow will also be aided by the consolidation of the fuel pumps in the same area.
- With no increase in the number of fuel pumps and a continued use, there will be no increase in the demand for municipal services.

- There is no indication that the proposed impervious surface would be changed in any significant way so that there should be no increase in storm water runoff onto adjacent property or the street.

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III. PUBLIC HEARINGS

- 1) Case # 11-1
 Petitioners: Hotchkiss/Doucette Revocable Trust 2005, Nancy E. Hotchkiss and Joseph Doucette
 Property: 325 Miller Avenue
 Assessor Plan 131, Lot 30
 Zoning District: General Residence A
 Description: Install 8 s.f. generator.
 Request: 1. A dimensional Variance from Section 10.521 to allow building coverage of 30.8% where 30.7% exists and 25% is the maximum allowed.

Action:

The Board voted to **grant** the petition as presented and advertised.

Stipulations:

None

Review Criteria:

The petition was granted for the following reasons:

- Granting the variance will not be contrary to the public interest as the essential character of the neighborhood will not be changed and the availability of a generator could have a positive effect on the public health, safety and welfare.
- The spirit of the Ordinance will be observed as the property is in a residential zone where appropriate accessory uses are allowed.
- In the substantial justice balance test, the harm to the petitioner if the request were denied would not be outweighed by any benefit to the general public.
- The value of surrounding properties will not be diminished as the unit will have little visibility and they may increase as a result of the property being protected.
- The special condition of the property resulting in unnecessary hardship from literal enforcement of the Ordinance is that the property is already in excess of lot coverage and the minimal increase is needed for protection of the property.

- 2) Case # 11-2
 Petitioner: William E. Gindele Revocable Trust, William E. Gindele, Trustee
 Property: 229 Clinton Street
 Assessor Plan 159, Lot 25
 Zoning District: General Residence A

Description: Rebuild existing garage with 24'8" x 31' structure and creating a second dwelling unit and second free-standing dwelling on the lot.

- Requests:
1. A dimensional Variance from Section 10.521 to allow a lot area per dwelling unit of 4,536± s.f. per dwelling unit where 7,500 per dwelling unit is required.
 2. A dimensional Variance from Section 10.521 to allow a rear yard setback 5'± where 20' is the minimum required.
 3. A dimensional Variance from Section 10.521 to allow building coverage of 29.6%± where 28%± exists and 25% is the maximum allowed.
 4. A Variance from Section 10.513 to allow two free-standing dwellings on a lot where only one free-standing dwelling is allowed.

Action:

A motion to grant the petition failed to pass and the petition was **denied**.

3) Case # 11-3

Petitioner: Michael Sanders
 Property: 10 Marjorie Street
 Assessor's Info: Plan 232, Lot 20
 Zoning District: Single Residence B

Description: Construct rear retaining wall and front entrance stairs.

- Requests:
1. A dimensional Variance from Section 10.521 to allow a front yard setback of 0'± where 16' exists and 30' is the minimum required.
 2. A dimensional Variance from Section 10.521 to allow a rear yard setback of 25'± where 30' is the minimum required.

Action:

The Board voted to **grant** the petition as presented and advertised, with the acknowledgement that:

- 1) A rear setback of 22' was previously granted so that the advertised dimensional variance for a rear yard setback of 25'± is not required, and
- 2) The encroachment into the front yard setback is limited to the retaining wall and stairs, as presented and shown on the application.

Stipulations:

None

Review Criteria:

The petition was granted for the following reasons:

- Granting the variance will not be contrary to the public interest or adversely impact surrounding property values as the house is appropriate to the neighborhood and the stairs and retaining wall will allow reasonable and safe access to the home.
- The spirit of the Ordinance will be observed by providing the means for the homeowner to have a reasonable and safe entrance on this site which has some unusual problems due to the drive-under garage and topography of the lot.
- Substantial justice will be done by granting the variance as the problem the retaining wall will correct was not foreseen by the then owner of the property or the Board at the time the previous variances were granted.

- The special condition of the property is that the house is already under construction with the retaining wall a reasonable accommodation to an unforeseen circumstance. The general purposes of the Ordinance are to keep the neighborhood attractive and safe and this proposal will advance those purposes.
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4) Case # 11-4

Petitioners: Campbell Family Revocable Trust, J. L. Campbell III &
H.D. Campbell-Fiore, Trustees

Property: 50 Willard Avenue

Assessor's Info: Plan 150, Lot 2

Zoning District: General Residence A

Description: Replace existing garage with 2-story 332 s.f.± garage/addition with connector and rear shed gable.

Requests: 1. A dimensional Variance from Section 10.521 to allow a right side yard setback of 5.3' where 10' is the minimum required.

2. A Variance from Section 10.321 to allow a lawful nonconforming building to be extended, reconstructed, or enlarged in a manner that is not in conformity with the Ordinance.

Action:

The Board voted to **grant** the petition as presented and advertised.

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- Replacing poorly conceived additions with more cohesive and coherent improvements will not be contrary to the public interest.
 - The spirit of the Ordinance will be observed by allowing a homeowner to improve the property and create needed living space with little impact on light and air of surrounding properties.
 - In the justice balance test, there will be no benefit to the general public in denying the variances.
 - The garage is in keeping with the neighborhood and surrounding properties so that their value will not be diminished.
 - An unreasonable hardship would be created if the variances were denied as relief from the setback will still be required but the property will be in greater conformance.
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5) Case # 11-5

Petitioner: Maplewood and Vaughan Holding Company, LLC

Property: 111 Maplewood Avenue

Assessor's Info: Plan 124, Lot 8

Zoning District: Central Business A

Description: Parking in connection with a new commercial/residential center.
Requests: 1. A Variance from Section 10.1113.20 to allow required off-street parking spaces to be located between a principal building and a street.

Action:

The Board voted to **grant** the petition as presented and advertised.

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- This project will not alter the essential character of the Gateway neighborhood, nor threaten the public health, safety or welfare so that granting the variance will not be contrary to the public interest.
- This is a well thought out project that balances the purposes and policies of the underlying Ordinance. One of the purposes of the Central Business A zone is to promote business, retail and residential uses and the proposal will incorporate all three while also encouraging pedestrian uses and providing a more attractive streetscape than would result from locating the parking along Maplewood Avenue.
- There would be no benefit to the general public if the petition were denied.
- The development of this parcel will improve the value of surrounding property values and adequate parking is needed for the development.
- The special conditions of the property resulting in a hardship in locating the required parking is that the lot has two corners and borders several streets so that literal enforcement of the Ordinance would require all parking to be located under the building. This is a reasonable solution to a problem so that there is no fair and substantial relationship between the provisions of the Ordinance and their application to this property.

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IV. OTHER BUSINESS

None was presented.

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V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 9:20 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary